



New Mexico Environment Department

FACT SHEET (Updated January 18, 2022)

COVID-19 Vaccination and Testing ETS

On November 5, 2021, the Occupational Safety and Health Administration (OSHA) issued an emergency temporary standard (ETS) to minimize the risk of COVID-19 transmission in the workplace. On January 13, 2022, the U.S. Supreme Court stayed the OSHA ETS. While no general vaccination and testing rule is in place, the Environment Department's Occupational Health and Safety Bureau (OHSB) encourages employers to consider vaccine and testing programs, and will continue to require employers to take reasonable steps to protect workers from COVID-19 under the general duty clause of the Occupational Health and Safety Act.

Are employers still required to protect workers from COVID-19?

- Subsection 50-9-5.A NMSA 1978 (the general duty clause of the Occupational Health and Safety Act) requires employers to protect workers from serious hazards, including COVID-19.
- State and local agencies may require employers to implement COVID-19 prevention measures, including vaccination and testing programs.
- Public Health Orders remain in effect and are enforceable. These Orders may require vaccination and testing of workers (see <https://cv.nmhealth.org/>).

Can employers still institute their own vaccination and testing programs?

- Yes, public and private employers may implement programs that require COVID-19 vaccination and/or testing of workers.
- The U.S. Supreme Court ruling does not affect existing employer vaccination and testing policies in New Mexico.

Are employers still required to report COVID-19 positive cases, hospitalizations and fatalities?

Yes, employers must report these events to OHSB in accordance with [11.5.1.16 NMAC](#).

Employers may choose to implement their own programs and may use the ETS for guidance to:

- Develop, implement, and enforce a mandatory COVID-19 vaccination policy, or establish, implement, and enforce a policy allowing employees to elect either to get vaccinated or to undergo weekly COVID-19 testing and wear a face covering at the workplace. *Note: The current New Mexico Public Health Order requires face coverings indoors regardless of an individual's vaccination status.*
- Determine the vaccination status of each employee, obtain acceptable proof of vaccination from vaccinated employees, maintain confidential records of each employee's vaccination status, and maintain a confidential roster of each employee's vaccination status.

Employers may choose to implement their own programs and may use the ETS for guidance to:
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- Support vaccination by providing employees reasonable time, including up to four hours of paid time, to receive each primary vaccination dose and booster dose, and reasonable time and paid sick leave to recover from any side effects experienced following each vaccination dose.
- Ensure that each employee who is not fully vaccinated is tested for COVID-19 at least weekly (if the employee is in the workplace at least once a week) or receives a negative test result within five days before returning to work (if the employee is away from the workplace for a week or longer).
- Require employees to promptly provide notice when they receive a positive COVID-19 test or are diagnosed with COVID-19.
- Immediately remove from the workplace any employee, regardless of vaccination status, who received a positive COVID-19 test or is diagnosed with COVID-19 by a licensed healthcare provider and keep the employee out of the workplace until return-to-work criteria are met.
- Ensure that each employee who is not fully vaccinated wears a face covering when indoors or when occupying a vehicle with another person for work purposes. *Note: The current New Mexico Public Health Order requires face coverings indoors regardless of an individual's vaccination status*

- Provide each employee with information, in a language and at a literacy level the employee understands, about workplace policies and procedures; vaccine efficacy, safety, and the benefits of being vaccinated (by providing the Centers for Disease Control and Prevention document [Key Things to Know About COVID-19 Vaccines](#)); protections against retaliation and discrimination; and laws that provide for criminal penalties for knowingly supplying false statements or documentation.
- Make certain records available for examination and photocopying to an employee (and to anyone having written authorized consent of that employee) or an employee representative.

Will the New Mexico Occupational Health and Safety Bureau implement or enforce the COVID vaccination and testing requirements established by the Centers for Medicare and Medicaid Services?

- No, OHSB does not have jurisdiction over the federal rule that applies to health care facilities that receive Medicare and Medicaid money from the federal government.

Additional Information

Visit www.osha.gov/coronavirus for additional information on:

- Compliance assistance materials and guidance,
- COVID-19 laws and regulations,
- COVID-19 enforcement policies, and
- Workers' rights (including how/when to file a safety and health or whistleblower complaint).



Contact New Mexico's Occupational Health and Safety Bureau at 505-476-8700.